

DEC 16 2005

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

RAYMOND DALE McVAY,

Plaintiff - Appellant,

v.

JOSEPH LEHMAN; et al.,

Defendants - Appellees.

No. 05-35115

D.C. No. CV-03-05102-RBL

MEMORANDUM^{*}

Appeal from the United States District Court
for the Western District of Washington
Ronald B. Leighton, District Judge, Presiding

Submitted December 5, 2005^{**}

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges.

Washington state prisoner Raymond Dale McVay appeals pro se from the district court's summary judgment in favor of defendants in his 42 U.S.C. § 1983 action alleging that prison grievance counselors conspired to and did retaliate

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

against him for filing prison grievances and a tort claim. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo both a district court's dismissal for failure to state a claim and summary judgment. *Barnett v. Centoni*, 31 F.3d 813, 815-16 (9th Cir. 1994) (per curiam). We affirm.

The district court properly granted summary judgment on McVay's retaliation claims because he failed to raise a genuine issue of material fact as to whether defendants filed a major infraction against him in response to his filing two grievances and a tort claim alleging that correctional officers broke his typewriter during a cell search. *See Rhodes v. Robinson*, 408 F.3d 559, 567-68 (9th Cir. 2005) (internal citations omitted).

The district court properly dismissed McVay's conspiracy claims because conclusory allegations are insufficient to state a section 1983 claim for relief. *See Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989).

AFFIRMED.